

Applicant notes that magnetization of fluids including water is well-known within the art and would be well understood by one knowledgeable in the art. For example, US Patent 5,584,994 teaches an apparatus for manufacturing magnetized water. Similarly, US Patent 5,500,121 teaches an apparatus for magnetically treating fluids. As the Examiner can see, the claims of US Patent 5,584,994 use the term "magnetized water". Applicant further notes that there are several commercial devices available for preparing magnetized water. Thus, it is applicant's position that the term "magnetized water" as used in the instant claims is consistent with terminology used in the prior art and that one of ordinary skill in the art would understand what is claimed. In view of this, it is respectfully requested that the Examiner reconsider this rejection.

Claim 8 was rejected under 35 USC 112 for use of the term "topologically". As the Examiner can see, this claim has been amended to read "topically" as per the Examiner's suggestion. The Examiner's assistance in this regard is greatly appreciated.

Claims 10 and 11 were rejected under 35 USC 112 for containing subject matter which was not described in the specification in such a way as to enable one skilled in the art ... to make and/or use the invention. However, applicant notes that page 9, third paragraph clearly describes application of the lotion to areas of the scalp for preventing hair loss and promoting hair re-growth, thereby showing how the invention is to be used. As per MPEP 706.03(a)(I), applicant notes that the Examiner can only reject a claimed invention as useful for a particular invention if the Examiner feels that that use is not credible. In response to the Examiner's comments regarding the nature of the invention and the state of the prior art in the aforementioned office action, applicant encloses under 37 CFR 1.132 a declaration from Connie Rocha regarding the use of the invention for treating hair loss. It is of note that applicant provided but did not sell a sample of the invention to Ms. Rocha. In view of this declaration and the amendments to the claims, it is respectfully requested that the Examiner reconsider this rejection.

Claims 8 and 9 were rejected under 35 USC 112 for containing subject

matter which was not described in the specification. Applicant however notes that uses of the lotion for relieving pain, swelling, itch and/or inflammation is disclosed for example on pages 8 and 9 of the instant application. As per MPEP 706.03(a)(I), applicant notes that the Examiner can only reject a claimed invention as useful for a particular invention if the Examiner feels that that use is not credible. In response to the Examiner's comments regarding the nature of the invention and the state of the prior art in the aforementioned office action, applicant encloses under 37 CFR 1.132 a number of declarations which support uses of applicant's invention described in the amended claims. Specifically, Shabaga, Chenier, Pambrun, Gaffney, Fiorino, Van Horne (both letters), Larsen, Marlo, Ayre, De Lariviere, Steinberg, Buors and Glanville all detail using applicant's invention to relieve pain. Catalano details using applicant's invention on rosacea. Similarly, Steinberg, Van Horne, Chenier, Larsen and Palmer all detail using applicant's invention to relieve itch; Marlo and Buors describe using applicant's invention to treat swelling. Fiorino, Balharry and Feasey describe using applicant's invention to treat psoriasis; Bertrand, Larsen, Chenier and Idzerda describe using applicant's invention to treat eczema; and Glanville and Chenier describe using applicant's invention on dry skin. As discussed above, these samples were provided but not sold to the above listed individuals. In view of these declarations and the amendments to the claims, it is respectfully requested that the Examiner reconsider this rejection.

Claims 1-7 and 17-22 were rejected under 35 USC 103(a) as being unpatentable over Kasimtsgva in view of Kovacs. Specifically, the Examiner has taken the position that Kasimtsgva teaches a face cream which does not irritate or sensitize the skin which contains an aqueous alcoholic glycerinic oat extract, lavender extract and glycerin. Kovacs teaches a method of extracting oat leaves wherein the leaves are passed through a food chopper and then treated in hot distilled water. The examiner has taken the position that it would have been obvious "to use the extraction technique taught by Kovacs in order to obtain an extract of oats for use in the composition with non-irritating properties as taught Kasimtsgva.

In response to the Examiner's remarks, applicant notes that the

described combination is not applicant's invention. Specifically, as discussed above, applicant's invention is a lotion having as an active ingredient oatstraw extract made from oatstraw steeped in water. As the Examiner will appreciate and as noted by Kovacs, column 1, lines 20-25, "avena [oat] consists of the dehusked and rolled starchy seed endosperm of *Avena sativa*" whereas "oatstraw" refers to the plant. As the Examiner is aware, different parts of plants have different properties and contain different levels of certain compounds and in some cases different compounds. As such, the material used in applicant's invention (oatstraw) differs from that used in the Examiner's combination (oats).

As discussed above, the chemical content of various parts of a plants are known to be different. If one were to ignore this fact, the combination of Kovacs and Kasimtsgva still does not teach applicant's invention. Specifically, in this instance, combining the two references would teach that young oat leaves could be substituted for oats and extracted using Kasimtsgva's aqueous alcoholic glycerinic extract. As discussed above, this is not applicant's invention.

As the Examiner can appreciate, the chemical profile of an extract varies significantly according to the solvent used. That is, some compounds are soluble in water whereas other compounds are soluble in organic solvents. As such, it is simply not reasonable to completely change the solvent used. Rather, combining Kasimtsgva with Kovacs with the intention of using distilled water as a solvent produces a combination wherein luteinizing hormone releasing activity is extracted from oats by treating the oats in hot distilled water, collecting the extract, adjusting the extract to pH 5.7 and purifying the extract on a chromatographic column, which again is not applicant's invention.

The application has been amended to include reference to the prior applications.

Regarding the information disclosure statement, we are attempting to determine the first date of publication of the references in question so that this information can be forwarded to the Examiner.

ATTORNEY DOCKET NO: 82223-202

EXAMINER Michael A. Willis  
ART GROUP 1619  
APPLICANT Lorraine Mignault  
SERIAL NO: 09/762,232  
FILED August 4, 1999  
FOR Topical Lotion Containing Oatstraw

In view of the foregoing, further and more favorable consideration is respectfully requested.

It is also noted that this adds one (1) additional independent claim. We therefore authorize the examiner to charge the amount of \$42.00 to our deposit account 01-0310. A duplicate copy of this page only is attached

Respectfully submitted

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent And Trademark Office on the date shown below.

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DATE: November 30, 2001

### LOTION

This application is a national phase entry of PCT CA99/06735, filed August 4, 1999 and claims benefit of USN 60/1095 filed August 5, under 35 USC 119(e).

The present invention relates generally to the field of skin care and therapeutic lotions.

### BACKGROUND OF THE INVENTION

At present, there is a trend in society away from chemical or synthetic pain relievers due to growing concerns about side-effects, long-term effects and dependency. However, individuals continue to experience the aches and pains associated with daily life, such as, scrapes, cuts, muscle pulls, spasms and sprains. Furthermore, there are also many individuals who suffer from pain, swelling and/or inflammation caused by conditions such as psoriasis, shingles, boils, cold sores, burns, sunburns, menstrual bloating, menstrual cramps, foot pain, acne, eczema, rosacea, dermatitis, insect bites, cancer treatments and arthritis, to name a few. Clearly, a lotion composed of natural ingredients that could be used to treat all of these ailments is needed.

### SUMMARY OF THE INVENTION

According to a first aspect of the invention, there is provided a topical lotion for relieving pain, swelling or inflammation comprising:

the active ingredient consisting of oatstraw; and  
water.

Preferably, the water is filtered/magnetized water.

Preferably, the lotion includes glycerine and the glycerine is vegetable glycerin.